

Client Alert: New Legislation Proposes "Cure" for Settling Ohio CSPA Claims

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This Independence Day, businesses in Ohio will have one more tool to attempt to resolve claims brought under the Ohio Consumer Sales Practices Act (CSPA). Effective July 3, 2012, companies sued under Ohio's CSPA can follow a statutory process to attempt to settle a claim at the beginning of a case. If the consumer and company don't reach a resolution under the new process, the consumer's damages are limited in certain circumstances.

After a consumer sues a business under the CSPA, the business has 30 days to deliver a "cure offer" to the consumer or the consumer's attorney. A cure offer must include:

- A statutory notice set forth in Ohio Revised Code 1345.092;
- Language that clearly explains the resolution being offered by the company consisting of each of the following:
 - The company's proposed remedy that consists only of monetary compensation to resolve the alleged violations of the CSPA;
 - Reasonable attorney's fees necessary or reasonably related to the filing of the initial complaint, not to exceed \$2,500; and
 - Court costs incurred by the consumer related to filing the complaint.

The business must send the cure offer by certified mail, return receipt requested and must file a copy of the cure offer with the court.

A consumer then has 30 days to accept or reject the cure offer. The consumer is required to file notice of acceptance or rejection with the court, but failure to file a notice is deemed a rejection of the cure offer.

If the consumer accepts the cure offer, the consumer may request an amount up to \$2,500 to pay attorney's fees and an amount to pay court costs. The consumer must provide bills and other documents evidencing the requested amounts. If the company finds the requested amounts reasonable, the company pays the requested amount and the cure offer. If the company disputes the attorney's fees requested, the

company can seek a ruling from the court. The court must review the documentation provided by the consumer and decide the appropriate amount of attorney's fees.

If the consumer rejects the cure offer, the case proceeds. If a "judge, jury, or arbitrator" awards the consumer actual, economic damages that are equal to or less than the value of the cure offer, the consumer is not entitled to:

- Treble damages;
- Any court costs incurred after the date the consumer received the cure offer; or
- Any attorney's fees incurred by the consumer after the date the consumer received the cure offer.

The cure offer is not admissible as evidence in a jury trial of the consumer's CSPA action.

The potential benefits of making a cure offer limiting a consumer's remedies for a CSPA claim must be weighed against the difficulty of establishing what amount to offer. The company only has 30 days from service of the complaint to make the cure offer. That 30 days is prior to discovery or dispositive motions. It leaves little opportunity for companies to assess the strength of a consumer's claim. The statute allows the court to extend the time period for filing a motion or pleading to allow both parties adequate time to comply with the statute, but there is no provision in the statute to allow the court to extend the 30-day deadline for sending the cure offer.